

Message Text

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C O N F I D E N T I A L STATE 301318

EXDIS, FOR SEITZ

E.O. 11652: GDS

TAGS: PDEV, RH

SUBJECT: RHODESIA: COMMENTS ON CONSTITUTION AND OTHER
DOCUMENTS

1. PLEASE CONTACT FCO EARLY MONDAY A.M. AND PASS FOLLOWING
DEPARTMENT COMMENTS ON DRAFT CONSTITUTION AND OTHER DOC
-
MENTS WHICH WERE HANDED TO MOOSE IN BRUSSELS.

2. IN GENEFAI, THE DOCUMENTS APPEAR TO BE LOGICAL
EXTENSIONS OF THE WHITE PAPER WHICH WE CONTINUE
TO SUPPORT AND USE AS BASIS OF OUR EFFORT.

3. IN RELATION TO THE CONSTITUTION, THE FOLLOWING SPECIFIC
SUGGESTIONS ARE MADE:
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A. PRESIDENTIAL CANDIDATES: THOUGH IT MAY BE IMPLICIT
IN B2(C), CONSTITUTION SHOULD STATE SPECIFICALLY THAT
CANDIDATES FOR THE PRESIDENCY MAY ALSO BE CANDIDATES
FOR MEMBERSHIP TO THE NATIONAL ASSEMBLY. THE SUCCESSFUL
PRESIDENTIAL CANDIDATE WOULD THEN, OF COURSE, BE OBLIGED
TO RESIGN HIS ASSEMBLY SEAT, ASSUMING THAT HE WON THAT
ELECTION AS WELL, WHILE THE UNSUCCESSFUL CANDIDATES WOULD
BE ABLE TO CONTINUE THEIR POLITICAL ACTIVITIES WITHIN
THE PARLIAMENTARY STRUCTURE.
B. MEMBERSHIP ON SPECIAL TRIBUNAL: PARAGRAPH B5 PRO-

POSES CREATION BY VOTE OF NATIONAL ASSEMBLY

F TRIBUNAL

TO INVESTIGATE CHARGES OF MISCONDUCT AGAINST PRESIDENT. TRIBUNAL IS TO CONSIST OF AT LEAST THREE INDIVIDUALS WHO HOLD OR HAVE HELD HIGH JUDICIAL OFFICE IN ZIMBABWE. WE SUGGEST THAT MEMBERSHIP ON THIS PANEL BE OPEN TO JUDICIAL FIGURES FROM OTHER COMMONWEALTH COUNTRIES TO AVOID LIKELY SITUATION IN INITIAL YEARS OF INDEPENDENCE IN WHICH POOL FROM WHICH MEMBERSHIP COULD BE SELECTED WOULD BE MOSTLY EX-RHODESIAN REGIME JUSTICES.

C. VOTING AGE: WE AGREE WITH RECOMMENDATION IN DOCUMENT C THAT VOTING AGE SHOULD BE 18, NOT 21 AS INDICATED IN PARAGRAPH E4.

D. SPECIALLY ELECTED MEMBERS: WE UNDERSTAND FROM LONDON 20305 THAT ALTERNATIVE B FOR ELECTION OF SPECIALLY ELECTED MEMBERS, I.E., QUALIFIED ROLL, HAS ALREADY BEEN DISCARDED BY UK. WE SEE, HOWEVER, PROBLEMS WITH ALTERNATIVE A'S SUGGESTION THAT HALF OF SPECIALLY ELECTED MEMBERS BE CHOSEN FROM MEMBERSHIP OF CURRENT HOUSE OF ASSEMBLY. THIS GIVES A POST HOC LEGITIMACY TO THE CURRENT CONFIDENTIAL

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HOUSE WHICH IT PRESENTLY LACKS. WE SUGGEST IT MAY BE BEST TO HAVE ALL SPECIALLY ELECTED MEMBERS CHOSEN FROM LIST PREPARED BY PRESIDENT WITH STIPULATIONS THAT AT LEAST HALF OF THOSE ELECTED MUST BE WHITE. RACIAL DESIGNATION HERE IS ADMITTEDLY UNPALATABLE, BUT PERHAPS UNAVOIDABLE. WE SHOULD ALSO HEED MOZAMBIKAN'S POINT THAT TALK OF "RACIAL MINORITIES" MIGHT CAUSE DIVISION BETWEEN AFRICANS, ON ONE HAND, AND COLOREDS AND ASIANS, ON OTHER, WHICH CURRENTLY MAY NOT EXIST.

E. ABILITY TO SPEAK AND READ ENGLISH: THESE SHOULD BE

ELIMINATED AS QUALIFICATIONS FOR MEMBERSHIP IN PARLIAMENT. PROVISION PRESUPPOSES THAT ENGLISH WILL BE THE ONLY OFFICIAL LANGUAGE OF ZIMBABWE. WE DO NOT OBJECT TO A GENERAL STATEMENT REQUIRING LITERACY IN AN OFFICIAL LANGUAGE(S).

F. FREEDOM FROM TORTURE: NOTWITHSTANDING THE STATEMENT IN PARA J OF DOCUMENT C EXPLAINING THE NEED FOR THE PARTICULAR WORDING OF ARTICLE IV OF THE DECLARATION OF HUMAN RIGHTS, IT APPEARS LUDICROUS TO FORBID TORTURE AND INHUMAN PUNISHMENT AND IN THE NEXT STATEMENT APPARENTLY CONDONE SUCH ACTS IF THEY WERE A LAWFUL PUNISHMENT ISSUED PRIOR TO INDEPENDENCE THIS IS A PRESENTATIONAL PROBLEM. SECOND SENTENCE OF ARTICLE IV SHOULD BE ELIMINATED.

G. FREEDOM OF MOVEMENT: WE AGREE WITH RECOMMENDATION IN DOCUMENT C THAT ARTICLE XII DELCARATION OF RIGHTS SHOULD CONTAIN LANGUAGE WHICH WILL ALLOW CONTINUED EXISTENCE OF TRIBAL TRUST LANDS AS PURELY AFRICAN AREAS. HOWEVER, WE URGE THAT DRAFTING BE DONE IN MANNER SO AS NOT TO GIVE MIS-IMPRESSION THAT CURRENTLY EXCLUSIVELY WHITE AREAS WILL BE SO CONTINUED.

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H. JUDICATURE: WE ASSUME THAT THE WORD "OR" SHOULD BE PLACED AT THE END OF J6(A) AS IT IS AT THE END OF J6(B) TO INDICATE THAT CANDIDATES FOR JUDGE OF HIGH COURT NEED NOT FULFILL REQUIREMENTS OF BOTH (A) AND (B).

I. PENSIONS: WE AGREE WIT; GENERAL CONCLUSIONS OF DOCUMENT C(A) THAT, TO AVOID FAVORING PUBLIC SERVANTS WHO LEAVE ZIMBABWE, ALL PUBLIC SERVICE PENSIONS SHOULD BE REMITTABLE. HOWEVER, WE UNDERSTAND THAT CURRENT RHODESIAN REGIME DOES NOT PERMIT TOTAL REMITTABLE OF COMMUTED (I.E. LUMP SUM) PENSION PAYMENTS. BALANCE OF PAYMENT POSITION OF NEW GOVERNMENT SHOULD, AT LEAST INITIALLY, ALSO BE PROTECTED IN SAME MANNER. .LANGUAGE GIVING THE INDEPENDENT GOVERNMENT SUFFICIENT FLEXIBILITY IN THE MATTER OF REMITTABLE OF COMMUTED PENSIONS SHOULD BE DRAFTED.

J. LAND TRANSFER: FOR PRESENTATIONAL REASONS WE BELIEVE CHANGE IN TERMINOLGY FROM "UNDEVELOPED" TO "UNDER-UTILIZED" WOULD PROMPT MORE TROUBLE THAN IT IS WORTH. FURTHER, CONCEPT OF UNDERUTILIZATION WHEN APPLIED TO LAND NOT USED FOR CROPS, I.E., TREES AND RANCHING, MAY SERVE TO GIVE UNDUE BENEFITS TO INDIVIDUALS WHO HAVE UTILIZED VIRGIN FOREST OR RANGE LAND FOR THESE ENDEAVORS, WITHOUT NECESSARILY ENTAILING ANY EXPENSE TO THEMSELVES.

4. THE FOLLOWING ARE COMMENTS ON THE DOCUMENT ENTITLED "TRANSITIONAL CONSTITUTION AND RELATED LEGAL AND ADMINISTRATIVE PROVISIONS."

A. ADVISORY COUNCILS: THIS SECTION SHOULD BE EXPANDED TO GIVE MORE EMPHASIS TO THE FUNCTION OF THE COUNCIL, AND TO CLEARLY INDICATE WHETHER SUB-COUNCILS ON SPECIFIC

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TOPICS ARE ENVISAGED. CREATION OF SUBCOUNCILS WOULD SERVE TO DESIGNATE AREAS IN WHICH ADVICE WOULD BE SOUGHT. WITHOUT IN ANY WAY DEROGATING FROM THE POWER OF THE RESIDENT COMMISSIONER, THE CONCEPT OF MANDATORY, NON-BINDING CONSULTATION ON CERTAIN TOPICS MIGHT BE INTRODUCED.

IN ADDITION TO ADVISORY COUNCILS PREVIOUSLY DISCUSSED INFORMALLY, CONSIDERATION MIGHT BE GIVEN TO CREATION OF A SPECIAL COUNCIL ON POLICE MATTERS.

B. PUBLIC SERVICE AND JUDICIAL POSTS: THIS SECTION WARRANTS REDRAFTING TO ELIMINATE TONE OF REGRET THAT CHANGES MAY BE "UNAVOIDABLE." IT SHOULD BE INDICATED THAT OTHER POSITIONS, APART FROM SECRETARY TO THE CABINET AND CHIEF JUSTICE, MAY NEED TO BE VACATED BY THEIR INCUMBENTS.

C. JUDICIARY: AMONG ADDITIONAL INDIVIDUALS WHO MAY HAVE TO VACATE WILL BE OTHER JUSTICES OF HIGH COURT. ANNEX B OF WHITE PAPER STATES THAT INDIVIDUALS APPOINTED TO HIGH COURT, INCLUDING CHIEF JUSTICE, DURING TRANSITIONAL PERIOD, WILL CONTINUE IN OFFICE AFTER INDEPENDENCE. THIS, IN EFFECT, GUARANTEES THAT FIRST PRESIDENT WILL NOT BE ALLOWED TO EXERCISE CONSTITUTIONAL AUTHORITY TO NAME CHIEF JUSTICE. WHILE WE UNDERSTAND CONFIDENCE BUILDING MOTIVATION FOR THIS PROVISION, IT NOW APPEARS TO BE OVERLY RESTRICTIVE AND UNNECESSARY GIVEN THE QUALIFICATIONS FOR APPOINTMENT TO THE COURT CONTAINED IN THE NEW DRAFT OF THE INDEPENDENCE CONSTITUTION. IN THIS REGARD, CONSIDERATION SHOULD BE GIVEN TO THE APPOINTMENT OF THE CHIEF JUSTICE, AND OTHER JUDGES AS NECESSARY, DURING THE TRANSITIONAL PERIOD FOR A TEMPORARY TENURE ONLY, PERHAPS TO EXTEND FOR A SPECIFIED, LIMITED TIME BEYOND INDEPENDENCE. JURISTS FROM OTHER COMMONWEALTH NATIONS AS WELL AS ZIMBABWEANS WOULD BE ELIGIBLE FOR THESE TEMPORARY APPOINTMENTS.

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D. COMMISSIONER OF POLICE: IT SHOULD BE CLEARLY ACKNOWLEDGED THAT AS THE INDEPENDENCE CONSTITUTION GRANTS PRESIDENT AUTHORITY TO REPLACE COMMISSIONER OF POLICE, THE TENURE OF OFFICE OF THE RESIDENT COMMISSION'S TRANSITIONAL PERIOD APPOINTEE MAY BE OF LIMITED DURATION.

E. FORCE DISENGAGEMENT AND CEASEFIRE: DOCUMENT E, PROPOSALS FOR THE ORGANIZATION OF THE ZNA, OUTLINES MEASURES NECESSARY AS PART OF A CEASEFIRE IN A FASHION POTENTIALLY MORE ACCEPTABLE TO ALL SIDES THAN DOES DOCUMENT A. IT IS IMPORTANT THAT NEITHER LIBERATION ARMIES OR RDF BELIEVE THAT DEMANDS PLACED UPON THEM FOR COMPLIANCE WITH PROVISIONS ARE MORE ONEROUS THAN THOSE LEVIED ON THE OTHER FORCE.

F. STRUCTURE OF THE ZNA: THE RETENTION OF EXISTING RDF SUPPORT UNITS AND TECHNICAL UNITS, COUPLED WITH THE ORGANIZATION OF THREE PRINCIPALLY EX-RDF INFANTRY BATTALIONS (OUT OF A TOTAL OF SEVEN SUCH BATTALIONS)

PROVIDES FOR A REGULAR ARMY FORCE THAT WILL NOT BE PERCEIVED AS BEING BASED ON THE LIBERATION ARMIES. AS A FIRST STEP IN RESOLVING THIS SITUATION, EXTENSIVE ACTIVITY TO INCORPORATE EX-LIBERATION ARMY MEMBERS INTO THE

SUPPORT UNITS MUST BE ENCOURAGED. CURRENT PHRASEOLOGY THAT THESE UNITS WILL BE RETAINED "SUBJECT TO AN ACCEPTABLE LEVEL OF AFRICANIZATION," IS INSUFFICIENT. WE SUGGEST THAT PHRASEOLOGY AND INTENT BE ALTERED TO STATE THAT "THE FRAMEWORK OF EXISTING RHODESIAN SUPPORT AND TECHNICAL UNITS WILL BE RETAINED BUT THAT EXTENSIVE TRAINING EFFORTS WILL BE UNDERTAKEN TO ;AVE THE COMPOSITION OF THESE UNITS APPROXIMATE THE GENERAL CONFIGURATION OF THE ARMY, THAT IS BASED ON THE LIBERATION FORCES, PRIOR TO INDEPENDENCE
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DAY."

G. POLICE: WE CONTINUE TO SUPPORT CONCEPT THAT THE POLICE MUST BE THE RESIDENT COMMISSIONER'S PRINCIPAL INSTRUMENT TO MAINTAIN LAW AND ORDER. HOWEVER, GIVEN PATRIOTIC FRONT'S NEGATIVE VIEW ON ROLE OF POLICE, FURTHER CONSIDERATION SHOULD BE GIVEN TO MEASURES WHICH COULD BE UNDERTAKEN TO PROVIDE GREATER SUPERVISION TO POLICE FORCE. GREATER UN LIAISON, INCLUDING PERHAPS A POLICE BATALION, AND THE POSSIBLE CREATION OF A POLICE ADVISORY COMMITTEE MENTIONED ABOVE MAY BE WORTH CONSIDERING.

H. UNZF: SECTION OF DOCUMENT ON THIS TOPIC GENERALLY ACCEPTABLE, BUT WE ASSUME THAT BRITISH WILL DISCUSS IT AND MORE DETAILED DOCUMENT F CAREFULLY WITH GEN. CHAND TO AVOID PUBLIC DISCUSSION OF IDEAS WHICH WOULD PROVE UNACCEPTABLE OR EMBARRASSING TO HIM. VANCE

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<< END OF DOCUMENT >>

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